

file

BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of An Alleged Unlicensed Storage)	
or Disposal, and the Alleged Nuisance)	IH-95-14
Caused by a Tire Dump Located in the City)	
of Sheboygan, Sheboygan County, Wisconsin)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On December 2, 1994, the Department of Natural Resources issued Findings of Fact, Conclusions of Law and Order No SED-94-07 to Edmond Hou-Seye and Universal Life Church, 2604 South Business Drive, Sheboygan, Wisconsin 53081. The Department alleges that the property owned by Research Universal Life Church, located at 2604, 2601 and 2522 South Business Drive, City of Sheboygan, Sheboygan County, Wisconsin, is being used for the storage and/or disposal of waste tires. The Order further alleges that an operating license for the storage or disposal of waste tires (solid waste) under sec. 144.44(4), Wis Stats., has never been issued to Research Universal Life Church or Edmond Hou-Seye.

On December 20, 1994, the Department received a request for Hearing pursuant to sec 144 44 and 227.42, Wis Stats., from Research Universal Life Church and Edmond Hou-Seye, by their attorney, James C. Murray.

On October 4, 1995, the Department forwarded the file to the Division of Hearings and Appeals for hearing.

A telephone motion hearing was held on February 6, 1996. On February 7, 1996, the ALJ issued Orders granting a Motion to Withdraw as Counsel, denying a Motion to Quash said Motion to Withdraw. The ALJ also granted a one day delay in commencement of the hearing at the request of the Order Recipient.

The Order Recipient failed to appear at hearing. Pursuant to sec. NR 2 09(3)(b), Wis. Admin. Code, the ALJ took testimony in this enforcement matter despite the failure to appear by the Order Recipient.

In accordance with secs. 227.47 and 227 53(1)(c), Stats , the PARTIES to this proceeding are certified as follows.

Wisconsin Department of Natural Resources, by

Milton Donald, Attorney
P. O. Box 7921
Madison, Wisconsin 53707-7921

Research Universal Life Church and/or Edmond Hou-Seye
2604 South Business Drive
Sheboygan, Wisconsin 53081-6102

FINDINGS OF FACT

1. Edmond Hou-Seye operates a retail tire business known as OK Tire Mart located at 2604, 2601 and 2522 South Business Drive, City of Sheboygan, Sheboygan County, Wisconsin (the site). During the course of operation of this business, waste tires as defined under sec. 144.449(1)(c), Wis. Stats., are generated. Tires exposed to the elements on this site have degenerated over time to become waste tires.

2. The site is owned by Universal Life Church (Respondent), and is being used for the storage and/or disposal of waste tires. Information provided to the Department by the Respondents indicates that waste tires handled by this business were placed on the property during operation of this business.

3. No license for storage or disposal of waste tires (solid waste) has been issued to the Respondents under sec. 144.44(4), Wis. Stats.

4. On December 20, 1988, an inspection by the Department indicated approximately 75,000 waste tires stored or disposed of on the site. A second inspection on July 8, 1994, indicated approximately 61,000 waste tires stored or disposed of on the site. This number was based upon an estimate that twenty percent of the tires were salable. Thomas Springer of Watertown Recyclers testified that no more than six to fifteen percent of tires at the site were salable according to state and industry standards. Clearly, the overwhelming majority of the tires at the site are waste tires within the meaning of Wisconsin statutes, meaning that the tires are no longer suitable for their original purpose because of wear, damage or defect.

5. On December 20, 1988, a letter was sent by the Department to the Respondents stating that storage and/or disposal of waste tires requires a license under sec. 144.44, Stats., and that if no license is issued, the waste tires must be removed and disposed of properly.

6. A Notice of Noncompliance (NON) and Notice of Nuisance Determination (NND) was issued to the Respondents on May 8, 1989. The NON and NND requested that the tires be processed and/or removed to an approved end user or a licensed solid waste facility. The notification required a written response within 20 days from the date of the letter as to their intention to have the tires processed and/or removed. The Department did not receive a response to this request.

7. On September 7, 1994, the Department delivered a draft consent order which outlined a schedule for the waste tires to be removed by Edmond Hou-Seye/Universal Life Church. The Department has not received an acceptable response in regard to the draft consent order from the Respondents. Exhibit 58 details the numerous contacts between the DNR and the Order Recipient in connection with this matter.

8. The Department properly determined that the storage or disposal of the waste tires

presents an unreasonable danger to public health, safety or welfare or the environment due to the fire danger the tires present and the fact the tires serve as an ideal breeding grounds for disease carrying mosquitos. DNR Tire Recovery Specialist Dennis Pippin testified that tree-hole mosquitos reproduce one thousand times more rapidly in tires than in their natural environment. Tree hole mosquitos are known carriers of so-called La Crosse encephalitis, which has been known to be a fatal illness among children.

Further, this site is of particular concern for the risk of fire because it is so close to railroad tracks, which have been known to cause brush fires. DNR Waste Tire Program Manager Paul Koziar testified of the significant detrimental environmental effects that would result from a tire fire at this site. City of Sheboygan Fire Chief Richard T. Reiss testified that a tire fire at this site would be extremely difficult to control given the fuel load of thousands of waste tires and access problems at the site. Numerous witnesses testified that this site is the number one remaining waste tire problem in the state of Wisconsin.

Taken as a whole, a clear preponderance of the evidence supports a Finding that the site constitutes an unreasonable danger to the public health, safety and welfare

9. The Order set forth below is reasonable and necessary to accomplish the purposes of sec 144.449, Stats.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary orders in cases involving unlicensed dumps pursuant to sec. 227.43(1)(b), Stats.

2. A waste tire is a tire that is no longer suitable for its intended purpose because of wear, damage or defect. sec 84.078, Stats. The waste tires are solid waste as defined in sec. 144.01(15), Stats.,

3. The storage and disposal of waste tires by the Respondents constitutes operation of a solid waste facility as defined in sec 144.43(5), Stats., and a violation of sec. 144.44(4), Stats

4. The waste tires stored or disposed of at the site constitute a nuisance and tire dump as those terms are defined in secs. 144.449(1)(a) and (b), Stats.

5 Pursuant to sec. 144.449(2), Stats., the Respondents are responsible for the waste tire stockpile on the site.

6. The Department has authority under secs. 144.431(2)(b) and 144.47(1)(a)1., Stats., to cause written notice to be served upon the alleged violators and require necessary corrective action be taken.

7. The Department notified the Respondents as the persons responsible for the nuisance, in accordance with secs. 144.431, 144.449(2) and 144.47, Stats., and requested the tires be removed

8. The Department has the authority under secs 144.431(2)(b), 144.47(1)(a)1 and 144 449(2), Stats , to order the persons responsible for a tire dump to abate the nuisance

9 This Order is a reasonable and necessary measure to assure compliance with secs 144.44(4) and 144.449, Stats.

10 This Order is enforceable under secs. 144.449(2r), 144.98 and 144.99, Stats.

ORDER

The Division of Hearings and Appeals therefore orders that the Respondents, Edmond Hou-Seye and/or Universal Life Church shall:

1. Within twenty (20) days of the effective date of this Order, submit an approvable work plan to the Department for abating the nuisance conditions caused by the tire dump The work plan shall include at a minimum:

- a. The method that will be employed to abate the nuisance by removal of all of the waste tires except that no more than 500 waste tires may be kept on the retail business premises at one time.
- b. The ultimate disposal location for the waste tires.
- c. The business name, address, contact person and Department license number of any landfill, solid waste storage facility, waste transporter or processor involved in abatement activities.

2. Within thirty (30) days of the effective date of this Order, begin removal of the waste tires to a licensed storage or disposal facility or a processor or facility specifically exempted by the Department from licensing. However the Department reserves the right to approve, approve conditionally, or reject in whole or in part the work plan submitted under paragraph 1 of this Order. If the work plan is rejected, the Department reserves the right to abate the nuisance in accordance with sec. 144 449(2), Stats.

3 Within ninety (90) days of the effective date of this Order, complete the abatement of the nuisance conditions caused by the waste tires in accordance with the work plan as approved by the Department.

4 By the tenth day of each month that the abatement activities occur, submit progress reports to the Department. The progress reports shall include at a minimum:

- a. The quantity of tires removed from the site to date.
- b. The disposal location of the removed tires
- c. The quantity of tires remaining on site.

5. Two (2) copies of each progress report shall be submitted to each address:

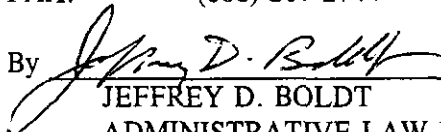
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Dated at Madison, Wisconsin on March 4, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By


JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

ORDERS\HOUSEYE JDB

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.